

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO
VILLATORO, MISAIEL ALEXANDER MARTINEZ
CASTRO, ANGEL MARTINEZ, EDWIN ULLOA
MOREIRA and MATEO UMANA individually and on
behalf of all others similarly situated,

Plaintiffs,

-against-

KELCO CONSTRUCTION, INC., KELCO
LANDSCAPING, INC., E.L.M. GENERAL
CONSTRUCTION CORP. D/B/A KELLY'S CREW,
JOHN KELLY and JOSEPH PROVENZANO,

Defendants.

Case No. 1:21-CV-09014
(PAE)(SDA)

**DECLARATION OF JOSE ESCOBAR IN SUPPORT OF
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR
CONDITIONAL CERTIFICATION PURSUANT TO 29 U.S.C. § 216(b)**

I, Jose Escobar, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration in support of Defendants' Opposition to Plaintiffs' Motion for Conditional Certification pursuant to 29 U.S.C. § 216(b). I am personally familiar with the facts set forth below and submit this declaration based on my personal knowledge.

2. I am a resident of Inwood, New York, in Long Island.

3. I am a union member of Local 1010.

4. I currently work for Kelco Construction as a laborer. I have been working for Kelco Construction since approximately April 2017.

5. As a laborer, I do landscaping and construction.

6. I am not required to report to 25 Newton Place, Hauppauge, New York ("Hauppauge facility") on any workday.

7. I rarely frequent the Hauppauge facility. In the past seven (7) years, I went to the Hauppauge facility a total of three (3) times. I went to the Hauppauge facility to complete my workday at the Hauppauge facility on days that it rained on the jobsite or if a job was canceled for that day. I was paid for all hours worked at the Hauppauge facility.

8. I drive into New York City jobsites alone in my personal vehicle. I do not pick up other employees.

9. I leave my home in the morning at approximately 4:30 a.m. and arrive at the jobsite by approximately 6:00 a.m. I usually work between the hours of 7:00 a.m. and 3:00 p.m.

10. It takes me approximately two (2) to two and one-half (2 ½) hours to drive back home after the end of the workday, depending on the traffic and the location of the jobsite.

11. I am not paid for drive time since I drive my personal vehicle to work.

12. I do not perform work on my vehicle or any company vehicle at the beginning or at the end of the workday for Kelco Construction, nor am I required to do so.

13. On occasion, I would wait at a bus stop to get a ride to jobsites in a company vehicle because there would be no available parking in the city for my personal vehicle.

14. I work for Kelco Construction approximately eight (8) hours per day, five (5) times per week.

15. Kelco Construction pays me at a union rate of approximately \$43.50 per hour.

16. I also perform work for ELM, but only on rare occasions. In the past year, I worked on a project in Connecticut for ELM for three (3) months. ELM paid me \$43.00 per hour per an agreement made in advance between ELM and me.

17. I am paid for overtime hours from Kelco Construction and ELM. I work overtime hours very rarely for Kelco Construction and ELM.

18. My primary language is Spanish. On January 25, 2023, Luis Lopez, CCI verbally translated this declaration to me in Spanish. I fully understand the contents of this declaration in my primary language.

19. This declaration was prepared by counsel for Defendants in the action based on an interview in which I voluntarily participated. I was advised that I could end the interview at any time. I have also been told by counsel for the Defendants that I should sign this declaration if I want to and if everything within it is true and correct to the best of my knowledge, information, and belief. I have been given a full opportunity to review this declaration carefully and freely and make any corrections and additions of any kind.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: January 25, 2023



Jose Escobar